

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

§

*Plaintiff,*

§

v.

CASE NO. 7:18-CV-303

26.000 ACRES OF LAND, MORE OR  
LESS, SITUATE IN HIDALGO COUNTY,  
STATE OF TEXAS; AND THE PHARR  
ORATORY OF ST. PHILIP NERI OF  
PONTIFICAL RITE, A TEXAS  
NON PROFIT CORPORATION,

§

*Defendants.*

§

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**JOINT DISCOVERY PLAN  
UNDER FRCP 26(f)**

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- 1. State when and in what manner the parties conferred as required by Rule 26(f), and identify the counsel and/or parties who participated in the conference.**

Pursuant to Rule 26(f) Federal Rules of Civil Procedure, a conference was held via email correspondence, telephone calls, and an in person meeting on June 28, 2018. David Garza attended on behalf of the Defendant and John A. Smith, III, and Megan Eyes, Assistant United States Attorneys, attended on behalf of the Plaintiff.

- 2. List by case number and court any cases related to this one that are pending in any state or federal court and describe how they are related.**

Southern District of Texas, McAllen Division:

18-cv-307 with Judge Crane – Right of Entry and Site Assessment for same project, different parcel of land.

18-cv-329 with Judge Crane – Right of Entry and Site Assessment for same project, different parcel of land.

18-cv-315 with Judge Alvarez – Right of Entry and Site Assessment for same project, different parcel of land.

18-cv-338 with Judge Alvarez – Right of Entry and Site Assessment for same project, different parcel of land.

**3. Briefly describe what this case is about.**

This is a civil action brought by the United States of America under the power of eminent domain through a Declaration of Taking at the request of the Secretary of the Department of Homeland Security, through the Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, for the taking of a temporary assignable easement beginning on the date possession is granted to the United States and ending 12 months later, consisting of the right of the United States, its agents, contractors, and assigns to enter in, on, over and across the land described in Schedule C of the Declaration of Taking to survey, make borings, and conduct other investigatory work needed to plan the proposed construction of border infrastructure.

**4. Specify the allegation of federal jurisdiction.**

Plaintiff alleges the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338, subject to Defendant's objections and defenses in its original Answer.

**5. Name the parties who disagree with the jurisdictional allegations and state their reasons.**

Defendant agrees with the Plaintiff's allegation of subject matter jurisdiction, subject to Defendant's objections and defenses in its original Answer.

**6. List anticipated additional parties that should be included, when they can be added, and by which parties desire their inclusion.**

None.

**7. List anticipated interventions.**

None.

**8. Describe any class-action issues.**

None.

**9. State whether each party represents that it has made the initial disclosures required by FRCP 26(a). If not, describe the arrangements that have been made to complete such disclosures.**

Not applicable.

**10. Describe the discovery plan agreed by the parties by stating:**

- a. What changes should be made in the timing, form or requirement for disclosures under Rule 26(a)**

None.

**b. When and to whom the plaintiff anticipates it may send interrogatories.**

Not Applicable.

**c. When and to whom the defendant anticipates it may send interrogatories.**

Not Applicable.

**d. Of whom and by when the plaintiff anticipates taking oral depositions.**

Not Applicable.

**e. Of whom and by when the defendant anticipates taking oral depositions.**

Not Applicable.

**f. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.**

Not Applicable.

**g. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).**

Not Applicable.

**h. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).**

Not Applicable.

**11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.**

Not Applicable.

**12. Specify the discovery beyond initial disclosures that has been undertaken to date.**

Not Applicable.

**13. State the date the planned discovery can reasonably be completed.**

Not Applicable.

**14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.**

Not Applicable.

**15. Describe the negotiations for a resolution of the case that were discussed prior to filing the complaint.**

The parties do not believe this case can be settled prior to the completion of discovery.

**16. Describe what each party has done or agreed to do to bring about a prompt resolution.**

Prior to filing suit, Defendant was sent correspondence from the United States Army Corps of Engineers requesting written permission to temporarily access the Defendant's land for a period of eighteen (18) months to conduct a survey, environmental assessment, appraisal, and related work to assess the Defendant's land for possible acquisition in support of U.S. Customs and Border Protection's construction of 2018 border infrastructure. A Right of Entry and Site Assessment and exhibit map of the Defendant's land was included.

The U.S. Army Corps of Engineers met in person with a representative of Defendant on May 25, 2018, to discuss the right of entry process.

On June 8, 2018, the U.S. Army Corps of Engineers mailed Defendant a letter explaining that without written permission to access Defendant's land, it would be necessary to file a Declaration of Taking in federal court within the next 90 days seeking a temporary (12 month) right of entry.

Counsel for Defendant and Plaintiff attended a site visit on June 28, 2018, of the Defendant's land. After negotiations, Plaintiff's counsel provided Defendant with a revised Right of Entry and Site Assessment with additional language about the lack of plans to construct infrastructure north of the levee, but an agreement was not reached.

**17. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.**

Not Applicable.

**18. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.**

Not Applicable.

**19. State whether a jury demand has been made and if it was made on time.**

Defendant has made a timely jury demand, but a jury is not applicable to this action.

**20. Specify the number of hours it will take to present the evidence in this case.**

Not Applicable.

**21. List pending motions that could be ruled on at the initial pretrial and scheduling conference.**

- Motion to Consider Abbreviated Joint Discovery Plan
- Motion for Possession

**22. List other motions pending.**

None.

**23. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.**

Defendant has raised first amendment freedom of religion defenses in its original Answer that it would like to have addressed.

**24. List the names, bar numbers, addresses and telephone numbers of all counsel.**

Counsel for Plaintiff:

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**FOR DEFENDANT:**

**THE PHARR ORATORY OF ST. PHILIP  
NERI OF PONTIFICAL RITE, A TEXAS  
NON PROFIT CORPORATION**

s/**David C. Garza (with permission)**

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Respectfully submitted,

**FOR PLAINTIFF:**

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United States Attorney  
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s/**John A. Smith, III**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and sent a copy via ECF to the following counsel:

David Garza – dgarza@garzaandgarza.com

By: s/John A. Smith, III  
**JOHN A. SMITH, III**  
Assistant United States Attorney